



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Secretary of Natural Resources

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Robert G. Burnley
Director

Gerard Seeley, Jr.
Piedmont Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO SAM'S EAST, INC. Colonial Heights, VA

SECTION A: Purpose

This is a Special Order by Consent issued under the authority of Va. Code § 62.1-44.15(8a), and 15(8d) by the State Water Control Board to Sam's East, Inc. for the purpose of addressing certain violations of the State Water Control Law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 62.1-44.7 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.

6. "Facility" or "Sam's Club" means Sam's East, Inc., located at 735 Southpark Boulevard, in Colonial Heights City, Virginia.
7. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
8. "Oil Transport" means Oil Transport, Incorporated.

SECTION C: Findings of Fact

1. The State Water Control Board regulation 9 VAC 25-580-220 requires owners and operators of UST systems to report to the board, within 24 hours, a spill or overfill of petroleum that results in a release to the environment that exceeds 25 gallons.
2. On July 16, 2004, the Department was notified by a third party of a gasoline release that occurred on November 25, 2003 at the Sam's Club in Colonial Heights, Virginia. Approximately 1,000 gallons of gasoline was reported released at the petroleum dispensing portion of the facility during the transfer of gasoline into an underground storage tank. A later report by Oil Transport stated that the amount of the release was in the range of 150 to 200 gallons. The UST was being filled by Oil Transport, a petroleum transport company under contract by the Facility. The Department was notified by the same third party that the release entered the storm drain and was removed.
3. On July 21, 2004, Oil Transport faxed the Department a report of the release.
4. A Notice of Violation (NOV No. 04-12-PRO-506) was issued by the Department on December 9, 2004 that cited Sam's Club for failure to report a petroleum release to the Department.
5. At the time of the spill, based on conversations between the store manager and the representative of Oil Transport, the Facility states that they believed that Oil Transport had contacted DEQ and properly notified them of the release that Oil Transport had caused.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted in Va. Code § 62.1-44.15 (8a) and (8d) orders Sam's Club and Sam's Club voluntarily agrees to pay a civil charge of \$625 within 30 days of the effective date of the Order in settlement of the violation cited in this Order. When making payment, Sam's Club shall reference this Order and shall include its Federal Identification Number. Payment shall be made by check payable to the "Treasurer of Virginia," deliverable to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Sam's Club, for good cause shown by Sam's Club, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Sam's Club by DEQ on December 9, 2004. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. In the interest of resolving this matter without delay and expense of litigation, Sam's Club agrees to the execution of this Consent Order, and admits to the jurisdictional allegations of the Order, but neither admits nor denies the Findings of Fact or Conclusions of Law herein.
4. Sam's Club consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Sam's Club declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Sam's Club to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Sam's Club shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Sam's Club shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Sam's Club shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Sam's Club. Notwithstanding the foregoing, Sam's Club agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall terminate automatically upon payment of the civil charge by Sam's Club. Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Sam's Club from its obligation to comply with any statute, regulation, permit condition, other order, certification, standard, or requirement otherwise applicable.
12. By its signature below, Sam's Club voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 29th day of September, 2005.

Robert G. Burnley, Jr.
Robert G. Burnley, Director
Department of Environmental Quality

Sam's East, Inc. voluntarily agrees to the issuance of this Order.

By: *David A. Bing*

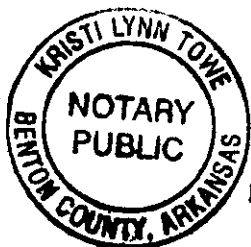
Date: 6-2-5

State of Arkansas
~~Commonwealth of Virginia~~
~~City/County of~~ Benton

The foregoing document was signed and acknowledged before me this 3rd day of June, 2005, by David A. Bing, on behalf
(name)
of Sam's East, Inc.

Kristi Lynn Towe
Notary Public

My commission expires: Dec 5, 2012



KRISTI LYNN TOWE
Notary Public
BENTON COUNTY
ARKANSAS
My Commission Expires
12/5/12

APPROVED
1/1/12